

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2023-2024 Regular Session**

AB 866 (Blanca Rubio)  
Version: April 4, 2024  
Hearing Date: June 18, 2024  
Fiscal: No  
Urgency: No  
AWM

**SUBJECT**

Juveniles: care and treatment

**DIGEST**

This bill clarifies that a dependent child of the juvenile court who is 16 years of age or older may consent to replacement narcotic abuse treatment that uses buprenorphine at a physician's office, clinic, or health facility, by a licensed physician and surgeon or other health care provider, as specified, whether or not the minor has the consent of their parent, guardian, person standing in loco parentis, or social worker and without a court order; and brings provisions relating to a social worker's provision of information relating to a dependent child's right to consent to specified medical treatment into conformity with requirements elsewhere in the Welfare and Institutions Code.

**EXECUTIVE SUMMARY**

Over the last 70 years, California has adopted a number of statutes that allow minors to seek medical care in certain situations without parental consent. Last year, the Legislature enacted AB 816 (Haney, Ch. 456, Stats. 2023), which permitted minors aged 16 years or older to consent to receive medications for opioid use disorder from a licensed narcotic treatment program as replacement narcotic therapy, to the extent permitted by federal law, and more specifically, for minors aged 16 years or older to consent to opioid use disorder treatment using buprenorphine at specified health facilities and administered by specified health professionals acting within the scope of their practice.

Minors in California are also permitted, at various ages, to consent to medical treatment relating to medical care related to sexual development, reproductive health, and prevention of unplanned pregnancies and sexually transmitted infections. Certain statutes within the Welfare and Institutions Code currently require a social worker to inform dependent children of their rights to consent to, and obtain, these medical services beginning when the minor is 10 years of age or older, but one statute requires

the social worker to provide this information beginning when the minor is 12 years of age or older. This bill modifies the outlier statute by reducing the age to 10 years and otherwise conforms the statute to the requirements in the rest of the Welfare and Institutions Code.

This bill is sponsored by the Children's Law Center of California and is supported by the California Academy of Child and Adolescent Psychiatry, the California Alliance of Caregivers, the California State Association of Psychiatrists, Children Now, and the County of Santa Clara. The Committee has not received timely opposition to this bill. The Senate Human Services Committee passed this bill with a vote of 3-1.

### **PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Defines "minor" as an individual under 18 years of age. (Fam. Code, § 6500.)
- 2) Generally prohibits a minor from consenting to medical treatment without the consent of their parent or guardian absent a specific statutory exemption. (Fam. Code, div. 11, pt. 4, §§ 6900 et seq.)
- 3) Provides a number of statutory exemptions to the general rule of 2), including:
  - a) A minor aged 12 years or older may consent to mental health treatment or counseling on an outpatient basis, or to residential shelter services, as specified. (Fam. Code, § 6924.)
  - b) A minor of any age may consent to medical care related to the prevention or treatment of pregnancy, including abortion. (Fam. Code, § 6925; *American Academy of Pediatrics v. Lungren* (1997) 16 Cal.4th 307, 314.)
  - c) A minor aged 12 years or older may consent to medical care related to the prevention or treatment of a communicable or sexually transmitted disease. (Fam. Code, § 6926.)
  - d) A minor aged 12 years or older may consent to medical care related to the diagnosis or treatment of the condition and the collection of medical evidence with regard to an alleged rape or sexual assault. (Fam. Code, §§ 6927, 6928.)
  - e) A minor aged 12 years or older may consent to medical care and counseling relating to the diagnosis and treatment of a drug- or alcohol-related problem, excluding replacement narcotic therapy; a minor aged 16 years or older may consent to receive medications for opioid use disorder, as specified and consistent with federal law, including buprenorphine under specified circumstances. (Fam. Code, §§ 6929, 6929.1)
- 4) Provides that a child may become a dependent of the juvenile court and be removed from their parent or guardian's custody on the basis of abuse or neglect. (Welf. & Inst. Code, div. 2, pt. 1, ch. 2, §§ 300 et seq.)

- 5) Permits a peace officer or social worker to take a minor into temporary custody without a warrant when the peace officer or social worker has reason to believe that the minor is a person who falls under the jurisdiction of the juvenile court and has an immediate need for medical care, is in immediate danger of physical or sexual abuse, the physical environment poses an immediate threat to the child's health or safety, or the minor has left a placement ordered by the juvenile court or otherwise violated a court order. (Welf. & Inst. Code, §§ 305-306.6)
- 6) Provides that, when a minor is taken into temporary custody under 5) and is in need of medical, surgical, or other remedial care, the social worker may, upon recommendation from the attending physician or dentist, authorize the performance of the medical, surgical, dental, or other remedial care. The social worker shall notify the parent, guardian, or person standing in loco parentis of the person (collectively, the parent), if any, of the needed care before the care is provided, and if the parent objects, the care shall be given only on an order from the court in the court's discretion. (Welf. & Inst. Code, § 369(a).)
- 7) Provides that, if it appears to the juvenile court that a minor concerning whom a petition has been filed with the court is in need of medical, surgical, dental, or other remedial care, and that there is no parent capable of authorizing or willing to authorize the remedial care or treatment for that minor, the court, upon the written recommendation of a licensed physician and surgeon or, if the person needs dental care, a licensed dentist, and after due notice to the parent, if any, may make an order authorizing the performance of the necessary medical, surgical, dental, or other remedial care for that person. (Welf. & Inst. Code, § 369(b).)
- 8) Provides that, if a minor is placed by order of the court within the care and custody or under the supervision of a social worker of the county where the minor resides and it appears to the court that there is no parent capable of authorizing or willing to authorize medical, surgical, dental, or other remedial care or treatment for the minor, the court may, after due notice to the parent, if any, order that the social worker may authorize the medical, surgical, dental, or other remedial care for the dependent child, by licensed practitioners, as necessary. (Welf. & Inst. Code, § 369(c).)
- 9) Permits a social worker, for a minor in custody pursuant to 6)-8) who requires emergency medical, surgical, or other remedial care in an emergency situation, to consent to the care provided by a licensed physician and surgeon or, if the child needs dental care in an emergency situation, by a licensed dentist without a court order.
  - a) The social worker shall make reasonable efforts to obtain the consent of, or to notify, the parent prior to authorizing the emergency care.
  - b) An "emergency situation" is one in which a child requires immediate treatment or the alleviation of severe pain or an immediate diagnosis and

- treatment of an unforeseeable medical, surgical, dental, or other remedial condition or contagious disease that, if not immediately diagnosed and treated, would lead to serious disability or death. (Welf. & Inst. Code, § 369(d).)
- 10) Provides that 6)-9) do not prevent a parent who has not been deprived of the custody or control of their child from providing medical, surgical, dental, or other remedial treatment, and that a parent (but not a guardian or person standing in loco parentis) may authorize the performance of medical, surgical, dental, or other remedial care for the minor, provided that, in nonemergency situations, the parent authorizing the care must inform the other parent prior to the administration of the care. (Welf. & Inst. Code, § 369(f), (g).)
- 11) Provides that nothing in 6)-10) limit the rights of dependent minors to consent to, among other things, the diagnosis and treatment of sexual assault, medical care relating to the prevention or treatment of pregnancy, including contraception, abortion, and prenatal care, treatment of infectious, contagious, or communicable diseases, mental health treatment, and treatment for alcohol and drug abuse.
- a) If a dependent child is 12 years of age or older, their social worker is authorized to inform the child of their right as a minor to consent to and receive those health services, as necessary.
  - b) Social workers are authorized to provide dependent children access to age-appropriate, medically accurate information about sexual development, reproductive health, and prevention of unplanned pregnancies and sexually transmitted infections. (Welf. & Inst. Code, § 369(h).)
- 12) Requires, at a periodic review hearing by the juvenile court on the status of a dependent in foster care, the court to make specified determinations, including, for a child who is 10 years of age or older and who has been under the jurisdiction of the juvenile court for a year or longer or for a nonminor dependent, whether the social worker or probation officer has done all of the following:
- a) Informed the child or nonminor dependent that they may access age-appropriate, medically accurate information about reproductive and sexual healthcare, including, but not limited to, unplanned pregnancy prevention, abstinence, use of birth control, abortion, and the prevention and treatment of sexually transmitted infections.
  - b) Informed the child or nonminor dependent, in an age- and developmentally appropriate manner, of the child's right to consent to sexual and reproductive health care services and the child's confidentiality rights regarding those services.
  - c) Informed the child or nonminor dependent how to access reproductive and sexual health care services and facilitated access to that care, including by assisting with any identified barriers to care, as needed. (Welf. & Inst. Code, § 366(a)(1)(F)(ii).)

- 13) Requires a case plan for a youth in foster care 10 years of age or older or a nonminor dependent to be updated annually to indicate that the case management worker has done all of the following:
  - a) Informed the child or nonminor dependent that they may access age-appropriate, medically accurate information about reproductive and sexual healthcare, including, but not limited to, unplanned pregnancy prevention, abstinence, use of birth control, abortion, and the prevention and treatment of sexually transmitted infections.
  - b) Informed the child or nonminor dependent, in an age- and developmentally appropriate manner, of the child's right to consent to sexual and reproductive health services and the child's confidentiality rights regarding those services.
  - c) Informed the child or nonminor dependent how to access reproductive and sexual health care services and facilitated access to that care, including by assisting with any identified barriers to care, as needed. (Welf. & Inst. Code, § 16501.1(e)(21).)

This bill:

- 1) Clarifies that a dependent child of the juvenile court who is 16 years of age or older may consent to the following, without the consent of a parent, guardian, person standing in loco parentis, or social worker, and without a court order:
  - a) To receive medications for opioid use disorder from a licensed narcotic treatment program as replacement narcotic therapy, only if, and to the extent, expressly permitted by federal law; and
  - b) To opioid use disorder treatment that uses buprenorphine at a physician's office, clinic, or health facility, by a licensed physician and surgeon or other health care provider acting within the scope of their practice.
- 2) Lowers the age of a dependent child at which a social worker must inform them of their right as a minor to consent and receive enumerated health care diagnoses, treatment, and services, from 12 years of age to 10 years of age, to bring the requirement in line with existing requirements relating to the obligations of social workers or probation officers and a dependent child or nonminor dependent's case plan.
- 3) Permits a social worker to facilitate a dependent child's access to care relating to reproductive and sexual and health care services, including assisting with any barriers to care.
- 4) Makes nonsubstantive technical and conforming changes.

## COMMENTS

### 1. Author's comment

According to the author:

AB 816 (Haney, 2023) provided a first in the nation treatment option for youth experiencing opioid addiction. Unfortunately, youth in foster care have been unable to consistently access the very lifesaving treatments afforded to others in the state this past year. The opioid epidemic is not limited to any population and has been especially harmful to those navigating the foster system. AB 866 clarifies the unique parameters within the foster system as it relates to treatment and ensures those seeking help can receive it, regardless of their status as a foster youth.

### 2. The right of minors to consent to medical care, including narcotic abuse treatment

“At common law, minors generally were considered to lack the legal capacity to give valid consent to medical treatment or services, and consequently a parent, guardian, or other legally authorized person generally was required to provide the requisite consent.”<sup>1</sup> This general rule was intended to “protect the health and welfare of minors, safeguarding them from the potential overreaching of third parties or the improvidence of their own immature decisionmaking, and leaving decisions concerning the minor's medical care in the hands of his or her parents, who were presumed to be in the best position to protect the health of their child.”<sup>2</sup>

But parental autonomy is not absolute. “Under the doctrine of *Parens patriae*, the state has a right, indeed, a duty, to protect children. [Citation] State officials may interfere in family matters to safeguard the child's health, educational development and emotional well-being.”<sup>3</sup>

Over the last 70 years, California has adopted a number of statutes that allow minors to seek medical care in certain situations without parental consent.<sup>4</sup> Last year, the Legislature enacted AB 816 (Haney, Ch. 456, Stats. 2023), which permitted minors aged 16 years or older to consent to receive medications for opioid use disorder from a licensed narcotic treatment program as replacement narcotic therapy, to the extent permitted by federal law, and more specifically, for minors aged 16 years or older to consent to opioid use disorder treatment using buprenorphine at specified health facilities and administered by specified health professionals acting within the scope of

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<sup>1</sup> *American Academy of Pediatrics v. Lungren* (1997) 16 Cal.4th 307, 314-315. Going forward, this analysis uses “parent” to include a guardian.

<sup>2</sup> *Id.* at p. 315.

<sup>3</sup> *In re Phillip B.* (1979) 92 Cal.App.3d 769, 801.

<sup>4</sup> *American Academy of Pediatrics, supra*, 16 Cal.4th at p. 316.

their practice. This right to consent is consistent with the federal approval of buprenorphine for persons aged 16 years or older.<sup>5</sup> According to the sponsor of this bill, buprenorphine is currently the only replacement narcotic therapy for opioid use disorder approved for use by minors, so while AB 816 is written to permit a minor aged 16 years or older to consent to any federally approved therapy, as a practical matter, buprenorphine is the only option available.

Although AB 816 applied to all minors, the author and sponsor report that there is confusion over whether a dependent minor aged 16 years of older may consent to such treatment without the consent of a social worker or a court order. In some cases, there appears to be a belief that these medications are psychotropic and therefore require a court order,<sup>6</sup> even though the definition of “psychotropic medication or drugs” requiring a court order is limited to medications provided to treat psychiatric disorders or illnesses, not substance use disorder.<sup>7</sup> In other cases, it appears that there is just general concern as to whether a dependent minor may consent to substance use disorder treatment on their own – even though AB 816 is not so limited, and there is no statute prohibiting minors aged 16 and older who are dependents of the juvenile court from obtaining such treatment.

For obvious reasons, a minor might be unwilling to report their opioid use to a juvenile court judge in order to get an order for treatment. The author and sponsor, accordingly, are concerned that this confusion over the state of the law could prevent dependent minors aged 16 years and older from obtaining much-needed treatment for opioid addictions.

3. This bill authorizes a minor aged 16 years or older who has been removed from the custody of their parents or guardians to consent to opioid use disorder treatment without a court order

This bill clarifies that a minor aged 16 years of age, who is a dependent of the juvenile court and has been removed from the custody of their parents or guardians, may consent to opioid use disorder medications as replacement narcotic therapy, provided that the use is approved by federal law, without the consent of their parents, guardians, social worker, or person standing in loco parentis, and without a court order. In other words, this bill makes clear that AB 816 applies equally to minors within the dependency system, ensuring that foster youth are not prevented from obtaining vital medical care.

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<sup>5</sup> United States Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, “Buprenorphine” (last updated Mar. 28, 2024), <https://www.samhsa.gov/medications-substance-use-disorders/medications-counseling-related-conditions/buprenorphine>. All links in this analysis are current as of June 13, 2024.

<sup>6</sup> See Welf. & Inst. Code, § 369.5.

<sup>7</sup> *Id.*, § 369.5(d).

The status of buprenorphine is the same as it was when this Committee considered AB 816: buprenorphine is approved by the federal Food and Drug Administration (FDA) to treat opioid use disorder.<sup>8</sup> Unlike other opioid abuse disorder treatments that have to be administered in clinics, buprenorphine can be prescribed or dispensed in physician offices, thereby making buprenorphine a more accessible treatment option for many people.<sup>9</sup> The FDA approved the use of buprenorphine by persons 16 years of age and older in 2002.<sup>10</sup> In 2023, in recognition of the state of the opioid addiction crisis and the need for access to treatment, Congress removed the requirement that physicians obtain a waiver before prescribing buprenorphine.<sup>11</sup> As such, this bill does not appear to raise any new concerns regarding the ability of older minors to consent to the treatment addressed in this bill.

4. This bill harmonizes requirements relating to providing information to dependent children regarding reproductive and sexual health care with existing statutes

Under current law, a social worker must provide dependent children aged 10 years or older, and nonminor dependents, with specified information relating to their ability to consent to and access a range of health care, including reproductive and sexual health care, in an age-appropriate manner;<sup>12</sup> the case plan for a dependent child aged 10 years or older and a nonminor dependent must also confirm that this information has been provided.<sup>13</sup> Those provisions also require a social worker to inform the minor or nonminor dependent how to access such care and to assist with barriers to obtaining that care, as needed.<sup>14</sup> Welfare and Institutions Code section 369, which addresses the rights of a dependent minor to consent to certain medical care, however, states that a social worker is authorized to inform a dependent child who is 12 years of age or older of their right to consent to and receive specified health services.

This bill brings Welfare and Institutions Code section 369 into conformity with the rest of the Welfare and Institutions Code relating to informing dependent children of their rights to consent to specified health care. Specifically, this bill lowers the age at which the social worker must provide a minor with information about their right to consent to certain health services, from 12 years of age to 10 years of age, to bring the notice in line with the other Welfare and Institutions Code sections, and adds a conforming requirement that the social worker provide access to, or facilitate access to, specified types of care.

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<sup>8</sup> United States Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, “Buprenorphine,” *supra*.

<sup>9</sup> *Ibid*.

<sup>10</sup> FDA, Approval letters re NDA 20-732 & NDA 20-733 (Subutex and Suboxone) (Oct. 8, 2022).

<sup>11</sup> United States Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, “Removal of DATA Waiver (X-Waiver) Requirement” (last updated Apr. 25, 2023), <https://www.samhsa.gov/medications-substance-use-disorders/removal-data-waiver-requirement>.

<sup>12</sup> Welf. & Inst. Code, § 366(a)(1)(F)(ii).

<sup>13</sup> *Id.*, § 16501.1(e)(21).

<sup>14</sup> *Id.*, §§ 366(a)(1)(F)(ii); 16501.1(e)(21).



5. Arguments in support

According to the bill's sponsor, the Children's Law Center of California:

California has seen a devastating explosion of opioid abuse and fatal overdoses among youth. In 2022, an average of twenty-two adolescents, ages 14 to 18, died each week from drug overdoses in the US. Researchers found seven of the counties with the highest rates of death were in California.

Recognizing the need for critical interventions, last year California enacted legislation that allows 16 and 17-year-olds to consent to their own medication-assisted treatment for opioid use disorder, including psychotropic medication, under specific circumstances. Medication-assisted treatment, which combines counseling and behavioral therapies with an opioid-agonist such as buprenorphine, is the treatment modality most associated with reduced overdose deaths.

AB 866 will further California's goal to adopt effective, life-saving strategies to address the opioid crisis by clarifying that court approval is not required for 16- and 17-year-old minors in foster care to consent to their own medication-assisted treatment for opioid use disorder.

**SUPPORT**

Children's Law Center of California (sponsor)  
California Academy of Child and Adolescent Psychiatry  
California Alliance of Caregivers  
California State Association of Psychiatrists  
Children Now  
County of Santa Clara

**OPPOSITION**

None received

**RELATED LEGISLATION**

Pending Legislation: AB 3103 (Quirk-Silva, 2024) permits, in the absence of a standing court order, a social worker to authorize a noninvasive initial medical, dental, and mental health screening of a child in temporary custody, as specified. AB 3103 is pending before the Assembly Human Services Committee.

Prior Legislation: AB 816 (Haney, Ch. 456, Stats. 2023) authorized minors aged 16 years of age and older to consent specified treatments to treat opioid use disorder, without the consent of their parent or guardian.

**PRIOR VOTES:**

This bill was gutted and amended on April 4, 2024, while pending in the Senate Appropriations Committee. The votes prior to the most recent Senate Human Services Committee votes are based on the bill before it was gutted and amended.

Senate Human Services Committee (Ayes 3, Noes 1)  
Senate Appropriations Committee (Ayes 7, Noes 0)  
Senate Human Services Committee (Ayes 5, Noes 0)  
Assembly Floor (Ayes 80, Noes 0)  
Assembly Appropriations Committee (Ayes 11, Noes 0)  
Assembly Human Services Committee (Ayes 7, Noes 0)

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